

Appendix R

Applicants' Voluntary Mitigation

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Appendix R

Applicants' Voluntary Mitigation

R.1 Introduction

The Canadian National Railway Company and Grand Trunk Corporation (collectively, CN or the Applicants) are seeking authorization from the Surface Transportation Board (Board) to acquire control of the EJ&E West Company, a wholly-owned non-carrier subsidiary of Elgin, Joliet and Eastern Railway Company (EJ&E). In this appendix, Appendix R, the Board's Section of Environmental Analysis (SEA) presents the Applicants' Voluntary Mitigation Proposal in its entirety. As part of the environmental review for this proposed transaction, SEA has evaluated the potential environmental consequences of the Proposed Action and alternatives as required by NEPA. The potential environmental effects that SEA identified would be both beneficial and adverse. For identified adverse effects, mitigation measures are considered to potentially reduce these adverse effects.

R.2 Background

On June 26, 2008, the Applicants submitted their proposed voluntary mitigation measures to SEA for the Board to consider in issuing its final decision. SEA has reviewed the voluntary mitigation measures and should the Proposed Action be approved, SEA would recommend that the Board require the Applicants to comply with all 70 of the voluntary mitigation measures submitted and contained in this appendix. The Applicants organized the individual mitigation measures by the environmental impact categories found in the Final Scope of Study. These categories are as follows: safety, hazardous materials transportation, transportation systems including emergency services, land use, air quality, noise and vibration, water and biological resources.

R.3 Types of Mitigation

In addition to the Applicants' voluntary mitigation measures, SEA has recommended preliminary environmental mitigation measures in Chapter 6 of this DEIS to address potentially substantial effects from the Proposed Action not addressed by the Applicants. SEA's environmental analysis and the resulting preliminary environmental mitigation recommendations reflect the variety and complexity of the environmental issues. They offer a reasonable and feasible way of minimizing some of the environmental impacts discovered during SEA's environmental review.

SEA has also encouraged the Applicants to negotiate mutually acceptable solution agreements with affected communities and other government entities to address potential environmental impacts, as appropriate. Negotiated agreements can be with neighborhoods, communities, cities, counties, regional coalitions, the states, or other entities.

R.4 Agency and Public Comment

SEA thanks the Applicants for timely providing their voluntary mitigation measures so the measures can be included in the Draft EIS. This provides an opportunity for the resource and regulatory agencies and the public to review these mitigation measures during the Draft EIS comment period. SEA welcomes agency and public comments on the Applicants' proposed voluntary mitigation measures and preliminary environmental mitigation recommendations. However, in order for SEA to assess the comments effectively, agencies and the public must be specific about a particular mitigation measure and the reasons why the suggested mitigation would be appropriate or inappropriate. After considering all public comments on the Draft EIS, SEA will make its final recommendations on environmental mitigation, including the Applicants' proposed voluntary mitigation measures, in the Final EIS.

Attachment R1

Cover Letter re Voluntary Mitigation Proposal (06/26/08)

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June 26, 2008

BY E-MAIL (rutsonv@stb.dot.gov)
AND HAND DELIVERY

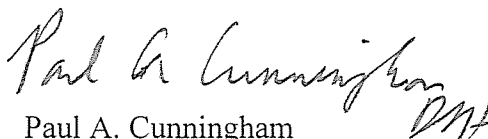
Ms. Victoria J. Rutson, Chief
Section of Environmental Analysis
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-0001

**Re: Canadian National Railway Company and Grand Trunk Corporation –
Control – EJ&E West Company (STB Finance Docket No. 35087)**

Dear Ms. Rutson:

Enclosed for inclusion in the Draft Environmental Impact Statement, please find Applicants' Voluntary Mitigation Proposal, which contains a list of 70 Voluntary Mitigation Measures for the Board to consider in issuing its final decision. Applicants request that this proposal be kept confidential and not be made publicly available until the issuance of the Draft Environmental Impact Statement.

Very truly yours,



Paul A. Cunningham
Counsel for Canadian National Railway Company
and Grand Trunk Corporation

Enclosure

cc: Phillis Johnson-Ball
John H. Morton
Normand Pellerin

Attachment R2

Applicants' Voluntary Mitigation Proposal

Applicants' Voluntary Mitigation Proposal

Introduction and Background

Canadian National Railway Company and Grand Trunk Corporation (together “CN” or “Applicants”)¹ here propose voluntary mitigation for the likely significant adverse environmental impacts associated with CN’s acquisition of control of EJ&EW (the “Transaction”). The Transaction would allow Applicants to reduce, if not eliminate, traffic on many of their lines in the urban core of Chicago, but would generally increase traffic on the suburban arc of the currently under-used EJ&E. The proposed mitigation is designed to be reasonable and meet the standards of mitigation previously established by the Board in like circumstances.

In an effort to open mitigation negotiations, CN has approached all of the communities that would be affected by the Transaction and is in active negotiations with several of those communities. As a result, CN may reach separate mitigation agreements with some communities. If that occurs, Applicants propose that the specific terms of the agreements with those communities be imposed in lieu of any location-specific mitigation measures set forth in this document.

The Board’s approach to determining required environmental mitigation involves an assessment of relevance, reasonableness, and proof: “any conditions the Board imposes must relate directly to the transaction before it, must be reasonable, and must be supported by the record before the Board.”² Applicants have sought to address each of these factors. Applicants’ proposed mitigation is relevant, because it would mitigate impacts associated with the Transaction that are significant when measured under the standards established by the Board’s Section of Environmental Analysis (“SEA”). And, while the environmental record has not yet been completed, Applicants herein seek to provide mitigation for expected real impacts – those thus far indicated by the record, including comments to SEA, and Applicants’ own independent analyses.

¹ Applicants incorporate by reference the short forms and abbreviations set forth in the Table of Abbreviations at CN-2 at 8-11.

² Draft Environmental Impact Statement at 6-1, *San Jacinto Rail Ltd. – Construction & Operation Exemption – Build-Out to the Bayport Loop Near Houston, Harris County, TX*, STB Finance Docket No. 34079 (STB served Dec. 6, 2002) (“*Bayport Loop DEIS*”); Draft Environmental Impact Statement at 5-1, *S.W. Gulf R.R. – Constuction & Operation – In Medina County, TX*, STB Finance Docket No. 34284 (STB served Nov. 5, 2004). *See also* 1 Draft Environmental Impact Statement at 3-3, *CSX Corp. – Control & Operating Leases/Agreements – Conrail Inc.*, STB Finance Docket No. 33388 (STB served Dec. 12, 1997) (“*Conrail DEIS*”) (“the environmental mitigation condition must be reasonable, must be directly related to the impact caused by the Acquisition, must be appropriate to the scope and degree of the environmental impact, and should not unduly frustrate the ability of the Applicants to realize the anticipated public benefits of the proposed . . . Acquisition.”)

Most important, Applicants have sought to design mitigation that is reasonable. What is reasonable is both a matter of whether the proposed mitigation is effective and whether it is reasonable in the context of the substantial public interest served by the Transaction. Here, Applicants have sought to propose mitigation that will effectively address all of the significant impacts associated with the Transaction.

Applicants have taken this approach, a very costly one, even though it is questionable whether they may be legally required by the Board to do so. Under the law, it is unclear: (1) whether the Board had the authority to allow NEPA review to extend beyond the statutory review deadlines imposed by the ICC Termination Act (“ICCTA”),³ and (2) whether the Board may impose any environmental conditions on minor transactions.⁴

Moreover, even if the Board has environmental mitigation authority here, it would be limited by NEPA and the relevant Supreme Court precedents to only mitigating those changes in

³ In ICCTA, Congress re-enacted the Staggers Rail Act’s 180-day time limit for review of minor transactions. NEPA does not excuse the Board from complying with ICCTA’s statutory deadlines. *See Flint Ridge Dev. Co. v. Scenic Rivers Ass’n*, 426 U.S. 776, 788 (1976) (“[W]here a clear and unavoidable conflict in statutory authority exists, NEPA must give way.”); *City of New York v. Minetta*, 262 F.3d 169, 178 (2d Cir. 2001) (“If a timeframe imposed by the statute on an agency is too short for the agency to prepare an EIS, . . . an EIS is not required.”)

⁴ The Board’s authority to impose conditions on this and other control transactions is granted by 49 U.S.C. § 11324(c). It has been generally accepted in licensing proceedings that “the context [of the statutory grant of conditioning power] strongly suggests, and the legislative history establishes beyond cavil, Congress’ intent that the [agency] apply the same ‘public interest’ test both to the basic merger and to any conditions it imposes on the merger.” *Lamoille Valley R.R. v. ICC*, 711 F.2d 295, 301 n.3 (D.C. Cir. 1983). But 49 U.S.C. § 11324(d) provides that, as applied to control transactions such as this one, not involving the merger or control of at least two Class I railroads, the “public interest” test of 49 U.S.C. § 11324(c) is a very limited one. Under that test, absent certain anticompetitive effects, which the Board has preliminarily determined are not present in this Transaction, the Application to acquire control of EJ&EW must be granted. As a result, it is not clear the ICCTA provides a legal basis for qualifying that grant on the basis of environmental factors unrelated to protection of competition or for frustrating Congress’ deadlines for review of a “minor” transaction. If SEA’s environmental review cannot be dispositive of the merits of the Transaction, it is questionable whether it can provide a legal basis for the exercise of the Board’s conditioning power.

As SEA has made clear, “the Board can only impose conditions that are consistent with its statutory authority.” *Bayport Loop DEIS* at 6-1. Certainly, NEPA itself confers no power on the Board to mitigate adverse environmental impacts, as the requirements of NEPA are procedural, not substantive, and do not require that the Board achieve any particular result. *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 371 (1989).

traffic that would not happen “but for” the Transaction.⁵ Thus, for example, if a railroad could increase the volume of rail traffic on one of its lines in the absence of regulatory authority, then such an increase in volume, under NEPA, need not be evaluated by the agency in its environmental review of a transaction involving that railroad. As CN has explained previously, much of its traffic that would shift to EJ&EW and that is accounted for in the Operating Plan is traffic that could shift to EJ&E today without regulatory authorization,⁶ and therefore need not be the subject of SEA review or mitigation recommendations.

Nevertheless, without ceding these legal questions and limitations, Applicants have dedicated enormous resources to assist SEA’s assessment of environmental impacts based on the full volume of traffic increases described in the Operating Plan. Accordingly, Applicants’ proposed voluntary mitigation addresses impacts from those increases, which substantially exceed impacts from traffic that could not move over EJ&E “but for” the Transaction.

Applicants have also sought to propose mitigation that is economically reasonable in the circumstances, so that the cost of mitigation will not defeat a Transaction that appears to have generally positive overall environmental impacts on the affected region and the Nation, and has substantial and unquestioned benefits for the public interest in meeting significant transportation needs.

Applicants would seek to implement their proposed mitigation within a budget of \$40 million, which is roughly 13% of the acquisition cost of EJ&EW. This \$40 million would be in addition to the more than \$20 million that Applicants expect to spend internally and (mostly) on third-party consultants to SEA in connection with SEA’s environmental analysis and the development of Applicants’ mitigation program. It would put the total environmental costs of the Transaction at \$60 million, more than 20% of Applicants’ \$300 million acquisition cost. In addition, Applicants would incur perpetual increases in certain operating costs as a consequence of their mitigation commitments.

These costs would be extraordinary. Applicants are aware of no other control transaction – “major” or “minor” – that has incurred STB-imposed mitigation costs of more than a single-digit percentage of the acquisition cost. Even in large construction cases, such as DM&E, the STB has imposed mitigation equivalent to only 5% of the total construction cost.⁷

⁵ “[W]here an agency has no ability to prevent a certain effect due to its limited statutory authority over the relevant actions, the agency cannot be considered a legally relevant ‘cause’ of the effect.” *Dept. of Transp. v. Public Citizen*, 541 U.S. 752, 770 (2004).

⁶ See Letter from Paul Cunningham (counsel for Applicants) to Victoria J. Rutson (Chief, SEA), Apr. 21, 2008, at 5-9 (responding to SEA Information Request #3), as supplemented by Letter from Paul A. Cunningham to Victoria J. Rutson, May 15, 2008, available at <http://www.stbfinancedocket35087.com/html/inforequest.html>.

⁷ In the DM&E construction case, SEA estimated that the total cost of the recommended mitigation would be approximately \$140 million, or 10% of the total estimated \$1.4 billion construction cost. 3 Final Environmental Impact Statement at 12-24, *Dakota, Minn. & E. R.R. Construction Into the Powder River Basin*, STB Finance Docket No. 33407 (STB served Nov.

Because the magnitude of these costs is so great, Applicants are understandably concerned that any additional mitigation costs would threaten the economic viability of the Transaction and force its termination. This would end Applicants' opportunity to serve the public interest in and beyond the Chicago area by reducing railroad and vehicular congestion and enhancing the economy. It would also eliminate their opportunity to produce the positive environmental benefits to communities that would see a reduction in CN trains after the Transaction. Those benefits, which the Board is required by CEQ rules to recognize,⁸ appear to be equal to, or to exceed the expected adverse impacts on the less populous communities along EJ&EW. There should be no such risk, however, if the SEA limits its mitigation recommendations substantially to the levels of impact addressed in prior like circumstances, as modified in the Board's scoping order.

Applicants look forward to reviewing the Draft EIS, and the public comments on that draft, which will provide a further basis for evaluating the nature and level of mitigation that will best meet the task of reducing the adverse impacts associated with the Transaction while permitting realization of its beneficial environmental and transportation impacts.

SEA's Standards For Imposing Mitigation

The following chart outlines Applicants' understanding of SEA's previously established standards for finding an impact to be "significant" (and thus potentially warranting mitigation) for those Environmental Impact Areas identified in SEA's Final Scope of Study (served April 28, 2008) for which Applicants are here proposing voluntary mitigation.

19, 2001). However, that \$140 million was split among the 5 agencies that cooperated in preparing the EIS; the STB's share of mitigation (which was directed at the types of impacts at issue here) was estimated to be \$70.0 to \$72.9 million, or about 5% of the total construction cost. *Id.* SEA recognized that mitigation costs for even much larger and complex capital projects, such as power generation facilities (which present significant and wide-ranging new - as opposed to relocated - environmental impacts) seldom exceed 10 to 20 percent of construction costs. *Id.*

⁸ 40 C.F.R. § 1502.16 requires an EIS to discuss the "direct effects and their significance" and the "indirect effects and their significance." 40 C.F.R. § 1508.8 defines the term "effects" to include "those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial." Further, when considering the intensity of the action, an agency should consider, *inter alia*, "[i]mpacts [which are synonymous with effects] that may be both beneficial and adverse." 40 C.F.R. § 1508.27. Additionally, most courts have held or suggested that agencies must consider the beneficial impacts of their actions. *See, e.g., Catron County Bd. of Comm'rs v. United States Fish & Wildlife Serv.*, 75 F.3d 1429 (10th Cir. 1996); *Friends of Firey Gizzard v. Farmers Home Admin.*, 61 F.3d 501 (6th Cir. 1995); *Natural Resources Def. Council, Inc. v. Herrington*, 768 F.2d 1355 (D.C. Cir. 1985); *Environmental Def. Fund, Inc. v. Marsh*, 651 F.2d 983 (5th Cir. 1981).

Area	Criteria of Significance (Standard for Considering Imposition of Mitigation)
Safety: Highway/Rail At-Grade Crossings ⁹	For crossings with a high accident frequency, ¹⁰ SEA has considered mitigation if the transaction is projected to cause an increase in accident frequency of one additional accident every 100 years. For other crossings, SEA has considered mitigation if the accident frequency would increase by five or more accidents every 100 years.
Hazardous Materials Transportation ¹¹	SEA has considered mitigation if a rail line segment would become a key route (carries at least 10,000 carloads of hazardous materials a year) or a major key route (20,000 carloads).
Transportation: Highway/Rail At-Grade Crossing Delay ¹²	SEA has considered mitigation where there is an increase of 30 seconds or more in average delay per stopped vehicle or there is an increase in average delay for all vehicles that (1) lowers the Level of Service (“LOS”) ¹³ at the crossing from C or better to D, or (2) regardless of the condition before the transaction, results in an LOS of E or F.
Transportation: Emergency Vehicle Delay ¹⁴	SEA has no uniform standard for finding significant impacts or imposing mitigation.

⁹ 2 Final Environmental Impact Statement at 4-5 – 4-6, *CSX Corp. – Control & Operating Leases/Agreements – Conrail Inc.*, STB Finance Docket No. 33388 (STB served May 29, 1998) (“*Conrail FEIS*”); 7B Draft Environmental Impact Statement at H-4, *Dakota, Minn. & E. R.R. Construction Into the Powder River Basin*, STB Finance Docket No. 33407 (STB served Sep. 27, 2000) (“*DM&E DEIS*”).

¹⁰ A high accident crossing has an accident frequency of 15 accidents every 100 years or an accident frequency at or above the state’s 50th highest accident rate. *Conrail FEIS* at 4-6.

¹¹ 2 *Conrail FEIS* at 4-12.

¹² 2 *Conrail FEIS* at 4-30; 7A *DM&E DEIS* at G-6.

¹³ Level of Service is a measure of the operational efficiency of a roadway vehicle traffic stream using procedures that consider factors such as vehicle delay, freedom to maneuver, traffic interruptions, comfort and convenience, and safety. The measures run from “A” (free flowing) to “F” (severely congested). SEA has determined an LOS of “D” to be the level at which traffic congestion becomes significant. 2 *Conrail FEIS* at 4-30 & n.1.

¹⁴ 2 *Conrail FEIS* at 4-35; 7A *DM&E DEIS* at G-10.

Area	Criteria of Significance (Standard for Considering Imposition of Mitigation)
Land Use & Socioeconomics ¹⁵	<p>SEA has considered mitigation if any of the following conditions would likely result from a rail line construction or abandonment:</p> <ul style="list-style-type: none"> ▪ It would be inconsistent with local land use plans in such a way that proceeding with the activity would substantially alter the character and planned use of the adjoining area ▪ A substantial portion of farmland in the county would be removed from actual or potential production ▪ It would be inconsistent with the requirements of a state Coastal Zone Management agency ▪ It would result in the direct elimination of jobs as a result of changes to the physical environment
Air Quality ¹⁶	<p>SEA has used the following criteria to determine whether the percentage increase in emissions of a pollutant would be significant:</p> <ul style="list-style-type: none"> ▪ If the percentage increase is less than 1% of the total emissions inventory of a county, SEA considered it insignificant in all cases ▪ If the percentage increase is greater than 1% and if EPA has designated the county as nonattainment for that pollutant, SEA considered the increase potentially significant and judges the significance based on whether the effects would be primarily local (CO) or system-wide (NOx). ▪ If the percentage increase is greater than 1% and EPA has designated the county as attainment or maintenance for the pollutant, SEA considered the net emissions increase and the level of existing emissions in the county to determine the significance. SEA judged the significance based on whether the effects would be primarily local (CO) or system-wide (NOx).
Noise ¹⁷	<p>SEA has considered mitigation where increased rail activity potentially exposes noise-sensitive receptors to wayside noise levels of at least 70 dBA L_{dn}¹⁸ and noise level increases of at least 5 dBA L_{dn}.</p>

¹⁵ 2 *Conrail FEIS* at 4-88.

¹⁶ 2 *Conrail FEIS* at 4-54 – 4-55.

¹⁷ 2 *Conrail FEIS* at 4-65; 7A *DM&E DEIS* at F-17.

¹⁸ A dBA is a weighted decibel, a single number measure of sound severity that accounts for the various frequency components in a way that corresponds to human hearing. L_{dn} is the day-night average noise level, which is the receptor's cumulative noise exposure from all noise events over a full 24 hours, adjusted to account for the perception that a noise at night is more bothersome than the same noise during the day. 2 *Conrail FEIS* at 4-64 n.9.

Area	Criteria of Significance (Standard for Considering Imposition of Mitigation)
Water Resources ¹⁹	<p>SEA has considered impacts on natural resources as warranting mitigation if any of the following would occur:</p> <ul style="list-style-type: none"> ▪ Removal, alteration, or filling of a wetland without receiving a section 404 permit from U.S. Army Corps of Engineers ▪ Impacts on wetlands known to function as habitat for threatened or endangered species ▪ Impacts on other identified locations of threatened or endangered species ▪ Impacts on reservoirs or other drinking water sources ▪ Impacts that significantly alter the flooding patterns within and adjacent to the impact area on floodplains ▪ Loss or degradation of wildlife sanctuaries, refuges, or national, state, or local parks and/or forests

Applicants are committed to meeting these established standards for mitigation. For example, Applicants are aware that two crossings in Joliet (at Woodruff Road and Washington Street) that are likely to meet SEA's criteria of significance for delay.²⁰ Applicants shall work in consultation with the City of Joliet to mitigate this impact, most likely by constructing facilities to permit increased train speeds and reduced crossing delays. While Applicants have not identified other at-grade crossings that would warrant mitigation under SEA's established criteria, Applicants have proposed a condition that would require working with municipalities and counties in support of securing funding for grade separations where they may be appropriate under criteria established by relevant state agencies.

Applicants have not proposed mitigation at levels beyond those required in past STB proceedings. No party has suggested a reasonable basis for lowering the thresholds for significance or for mitigation, and Applicants should not be expected to exceed the standards of prior cases in the absence of such a showing. That would especially be the case here, where such extra mitigation would provide no reciprocal benefit to the Applicants and where, as indicated by Applicants' preliminary analysis, most of the principal adverse environmental impacts associated with the Transaction and affecting communities along EJ&EW would be balanced by equivalent or greater reduced environmental impacts for the communities along Applicants' routes in the urban core of Chicago. For example, Applicants' analysis of grade crossing delay indicates that, region-wide, commuters would save approximately 174 hours a day as a result of reduced grade crossing delay.²¹ Where public benefits are equivalent to, or greater than public costs, then, at a

¹⁹ 2 *Conrail FEIS* at 4-82.

²⁰ Specifically, the Transaction would result in an LOS of "F" at those two crossings.

²¹ Grade crossing delay would increase at crossings on EJ&EW by approximately 1152 hours a day, and would be reduced at crossings on Applicants' lines inside the EJ&E arc by approximately 1326 hours a day. Letter from Paul A. Cunningham (Counsel for Applicants) to Victoria J. Rutson (Chief, SEA), Exhibit C (Mar. 12, 2008) (responding to SEA Information

minimum, any mitigation over and above that required to mitigate generally recognized significant impacts should be funded by public sources.

Applicants are also sensitive to the fact that some potential mitigation may not meet community aesthetic standards, or may not be desirable from a cost-benefit analysis. For that reason, Applicants are willing to consider a range of options to address specific communities' needs. For example, Applicants shall work with the affected communities that have sensitive receptors that would experience an increase in noise levels of 5 dBA or more to reach 70 dBA. Generally, noise barriers are chosen as the primary noise mitigation method because they can be built on existing railroad right-of-way and they mitigate both indoor and outdoor noise impacts.²² However, if walls are unacceptable to some communities, Applicants are willing to explore other options to mitigate noise, such as providing funding for grade crossing warning upgrades that could be used to implement quiet zones.

APPLICANTS' VOLUNTARY MITIGATION MEASURES

Applicants propose the following voluntary mitigation measures for the Board to consider in issuing its final decision. Applicants plan on implementing the proposed mitigation within the later of three years after approval of the Application or the completion of the capital improvements described in the operating plan.

The individual mitigation measures are organized by the Environmental Impact Categories found in the Corrected Final Scope of Study, served April 28, 2008.

1. SAFETY

Grade Crossings

- VM 1. Applicants shall consult with appropriate agencies to determine the final design and other details of the grade crossing protections or rehabilitations on EJ&EW's rail line. Implementation of all grade crossing protections shall be subject to the review and approval of the Federal Railroad Administration ("FRA") and the appropriate state Departments of Transportation.
- VM 2. Where necessary for implementation of a Quiet Zone, and in consultation with the affected community, FRA, and the appropriate state Department of Transportation, Applicants shall construct or install roadway median barriers to reduce the opportunity for vehicles to maneuver around a lowered gate.

Request of Dec. 18, 2007), *available at*
<http://www.stbfinancedocket35087.com/html/inforequest.html>.

²² *Conrail FEIS* at 4-71.

- VM 3. Applicants shall consult with affected communities to improve visibility at highway rail at-grade crossings by clearing vegetation or installing lighting to illuminate passing or stopped trains.
- VM 4. Where grade-crossing rehabilitation is agreed to, Applicants shall assure that rehabilitated roadway approaches and rail line crossings meet or exceed the standards of the State Department of Transportation's rules, guidelines, or statutes, and the American Railway Engineering and Maintenance of Way Association ("AREMA") standards, with a goal of eliminating rough or humped crossings to the extent reasonably practicable.
- VM 5. For each of the public grade crossings on EJ&EW's rail line, Applicants shall provide and maintain permanent signs prominently displaying both a toll-free telephone number and a unique grade-crossing identification number in compliance with Federal Highway Regulations (23 C.F.R. Part 655). The toll-free number shall enable drivers to report accidents, malfunctioning warning devices, stalled vehicles, or other dangerous conditions and shall be answered 24 hours per day by Applicants' personnel. At crossings where EJ&EW's right-of-way ("ROW") is close to another rail carrier's crossing, Applicants shall coordinate with the other rail carrier to establish a procedure and share information regarding reported accidents and grade-crossing device malfunctions.
- VM 6. Applicants shall work with school and park districts to provide fencing where schools or parks are adjacent to EJ&EW's right of way.
- VM 7. Applicants shall continue ongoing efforts with community officials to identify elementary, middle, and high schools within 0.5 miles of EJ&EW's ROW and provide, upon request, informational materials concerning railroad safety to such identified schools.

2. HAZARDOUS MATERIALS TRANSPORTATION

- VM 8. Applicants shall comply with the current Association of American Railroads ("AAR") "key route" guidelines, found in AAR Circular No. OT-55-I, and any subsequent revisions.
- VM 9. Applicants shall comply with the current AAR "key train" guidelines, found in AAR Circular No. OT-55-I, and any subsequent revisions.
- VM 10. To the extent permitted and subject to applicable confidentiality limitations, Applicants shall distribute to each local emergency response organization or coordinating body in the communities along the key routes a copy of the Applicants' current Hazardous Materials Emergency Response Plans.

- VM 11. Applicants shall incorporate EJ&EW into their existing Hazardous Materials Emergency Response Plan.
- VM 12. Applicants shall comply with United States Department of Transportation hazardous materials regulations when handling, storing, or disposing of hazardous materials. Applicants shall dispose of all materials that cannot be reused in accordance with applicable law.
- VM 13. Upon request, Applicants shall implement real-time or desktop simulation emergency response drills with the voluntary participation of local emergency response organizations.
- VM 14. Applicants shall continue their ongoing efforts with community officials to identify the public emergency response teams located along EJ&EW and shall provide, upon request, hazardous material training.
- VM 15. In accordance with their Emergency Response Plan, Applicants shall make the required notifications to the appropriate Federal and state environmental agencies in the event of a reportable hazardous materials release. Applicants shall work with the appropriate agencies such as the United States Fish and Wildlife Service, Illinois Environmental Protection Agency and Indiana Department of Environmental Management to respond to and remediate hazardous materials releases with the potential to affect wetlands or wildlife habitat(s), particularly those of federally threatened or endangered species.
- VM 16. Prior to initiating any Transaction-related construction activities, Applicants shall develop a spill prevention plan for petroleum products or other hazardous materials during construction activities. At a minimum, the spill prevention plan shall address the following:
- Definition of what constitutes a reportable spill;
 - Requirements and procedures for reporting spills to appropriate government agencies;
 - Methods of containing, recovering, and cleaning up spilled material;
 - Equipment available to respond to spills and location of such equipment; and
 - List of government agencies and Applicants' management personnel to be contacted in the event of a spill. In the event of a reportable spill, Applicants shall comply with their spill prevention plan and applicable Federal, state, and local regulations pertaining to spill containment and appropriate clean-up.

3. TRANSPORTATION SYSTEMS

Grade Crossing Delay

- VM 17. Applicants have identified two public highway/rail at-grade crossings located in Joliet (Woodruff Road and Washington Street) where traffic delays would likely require mitigation to reduce impacts below SEA's established criteria of significance. Applicants shall work in consultation with the City of Joliet to develop and implement appropriate mitigation, most likely the construction of railroad facilities to permit increased train speeds and reduced crossing delays.
- VM 18. Although Applicants have not identified any other grade crossings that would require mitigation under SEA's established standards, Applicants shall, upon request, work with municipalities and counties in support of securing funding, in conjunction with appropriate state agencies, for grade separations where they may be appropriate under criteria established by relevant state Department of Transportation. Applicants shall contribute their statutorily required amount of funding to the cost of the grade separation.
- VM 19. Applicants shall install power switches along EJ&EW where Applicants determine that manual switches could cause stopped trains to block grade crossings for excessive periods of time and that power switches would increase the speed of rail traffic and reduce the likelihood of such blockages.
- VM 20. In order to minimize the number of trains being stopped by operators at locations that block grade crossings on the EJ&EW system, Applicants shall work with other railroads to establish reasonable and effective policies and procedures to prevent other railroads' trains from interfering with Applicants' trains on EJ&EW.

Emergency vehicle delay

- VM 21. Applicants shall notify Emergency Services Dispatching Centers for communities along the affected segments of all crossings blocked by trains that are stopped and may be unable to move for a significant period of time.
- VM 22. Applicants shall work with affected communities to minimize emergency vehicle delay by:
- maintaining facilities for emergency communication with local Emergency Response Centers through a dedicated toll-free telephone number; and
 - providing, upon request, dispatching monitors that allow Emergency Response Center dispatching personnel to see real-time train locations.
- VM 23. Applicants shall make Operation Lifesaver programs available to communities, schools, and other organizations located along the affected segments.

Construction

- VM 24. At least one month prior to initiation of Transaction-related construction activities, Applicants shall provide the information described below regarding Transaction-related construction of sidings, double-tracking, or connections, as well as any additional information, as appropriate, to fire departments and the Local Emergency Planning Commissions (“LEPC”) for communities within or adjacent to the construction area:
- The schedule for construction throughout the project area, including the sequence of construction work relating to public grade crossings and approximate schedule for these activities at each crossing;
 - A toll-free number to contact Applicants’ personnel, to answer questions or attend meetings for the purpose of informing emergency-service providers about the project construction and operations; and
 - Revisions to this information, including changes in construction schedule, as appropriate.
- VM 25. In undertaking Transaction-related construction activities, Applicants shall use practices recommended by AREMA and recommended standards for track construction in the AREMA Manual for Railway Engineering.
- VM 26. During Transaction-related construction concerning at-grade crossings, when reasonably practicable, Applicants shall consult with the appropriate state Department of Transportation regarding detours and associated signage, as appropriate, or maintain at least one open lane of traffic at all times to allow for the quick passage of emergency and other vehicles.

4. LAND USE

General Land Use

- VM 27. Land areas that are directly disturbed by Applicants’ Transaction-related construction and are not owned by the Applicants (such as access roads, haul roads, and crane pads) shall be restored to their original condition, as may be reasonably practicable, upon completion of Transaction-related construction.
- VM 28. During construction, temporary barricades, fencing, and/or flagging shall be used in sensitive habitats to contain construction-related impacts to the area within the construction Right Of Way (“ROW”). Staging areas shall be located in previously disturbed sites and not in sensitive habitat areas.
- VM 29. To the extent reasonably practicable, Applicants shall confine construction traffic to a temporary access road within the construction ROW or established public roads. Where traffic cannot be confined to temporary access roads or established public

roads, Applicants shall make necessary arrangements with landowners to gain access from private roadways. The temporary access roads shall be used only during project-related construction. Any temporary access roads constructed outside the rail line ROW shall be removed and restored upon completion of construction unless otherwise agreed to with the landowners.

- VM 30. During Transaction-related earthmoving activities, Applicants shall remove topsoil and segregate it from subsoil. Applicants shall also stockpile topsoil for later application during reclamation of disturbed areas along the ROW. Applicants shall place the topsoil stockpiles in areas that would minimize the potential for erosion and use appropriate erosion control measures around all stockpiles to prevent erosion.
- VM 31. Applicants shall commence reclamation of disturbed areas as soon as reasonably practicable after Transaction-related construction ends along a particular stretch of rail line. The goal of reclamation shall be the rapid and permanent reestablishment of native ground cover on disturbed areas. If weather or season precludes the prompt reestablishment of vegetation, Applicants shall use measures such as mulching or erosion control blankets to prevent erosion until reseeding can be completed.
- VM 32. Applicants shall limit ground disturbance to only the areas necessary for Transaction-related construction activities.
- VM 33. Applicants shall require contractors to dispose of waste generated during Transaction-related construction activities in accordance with all applicable Federal, State, and local regulations.

Community Outreach

- VM 34. Prior to initiation of Transaction-related construction activities, Applicants shall name a Community Liaison to: consult with affected communities, businesses, and agencies; seek to develop cooperative solutions to local concerns regarding construction activities; be available for public meetings; and conduct periodic public outreach regarding Transaction-related construction activities. The Community Liaison shall be available to consult with businesses and agencies until all Transaction-related construction activities are complete. Applicants shall provide the name and phone number of the Community Liaison to mayors and other appropriate local officials in each community where Transaction-related construction activities will occur.
- VM 35. Applicants shall continue their ongoing community outreach efforts by maintaining, throughout the period of construction of Transaction-related sidings, double-track, and connections, a website about the construction.

Residential

- VM 36. Applicants' Transaction-related construction vehicles, equipment, and workers shall not access work areas by crossing residential properties without the permission of the property owner or occupant.

Business and Industrial

- VM 37. Applicants' Transaction-related construction vehicles, equipment, and workers shall not access work areas by crossing business or industrial areas, including parking areas or driveways, without advance notice to the business owner.
- VM 38. Applicants shall work with affected businesses or industries to appropriately redress Transaction-related construction activity issues affecting any business or industry.
- VM 39. To the extent reasonably practicable, Applicants shall ensure that entrances and exits for businesses are not obstructed by Transaction-related construction activities, except as required to move equipment.

State Lands

- VM 40. Applicants shall consult with the General Land Office ("GLO") of Illinois to coordinate an Easement Agreement for crossing State-owned parks to reach Transaction-related construction areas.

Utility Corridors

- VM 41. Applicants shall make reasonable efforts to identify all utilities that are reasonably expected to be materially affected by the proposed construction within their existing ROW or that cross their existing ROW. Applicants shall notify the owner of each such utility identified prior to commencing Transaction-related construction activities and coordinate with the owner to minimize damage to utilities. Applicants shall also consult with utility owners to design the rail line so that utilities are reasonably protected during Transaction-related construction activities.
- VM 42. Applicants shall use the services of a qualified pipeline engineering firm that is familiar with the project area to assist in the identification of the various pipeline crossings and to assist in the design of crossings as necessary for Transaction-related construction activities.

8. AIR QUALITY

- VM 43. Applicants shall accelerate implementation of EPA locomotive emissions reduction efforts by installing idling control systems on their switching locomotives assigned to

the Chicago area and shall accelerate replacement of switching locomotives that are excluded from EPA emission standards and are now in service at Chicago-area yards that will experience increased yard activity as a result of the Transaction with locomotives that are compliant with EPA Tier 0 or more stringent emission standards.

- VM 44. Applicants, to the extent reasonably practicable, shall adopt efficient fuel saving practices that may include a range of operating practices that will help reduce locomotive emissions, such as shutting down locomotives when not in use and when temperatures are above 40 degrees.
- VM 45. To minimize fugitive dust emissions created during Transaction-related construction activities, Applicants shall implement appropriate fugitive dust suppression controls, such as spraying water or other approved measures. Applicants shall also regularly operate water trucks on haul roads to reduce dust.
- VM 46. Applicants shall work with their contractors to make sure that construction equipment is properly maintained and that mufflers and other required pollution-control devices are in working condition in order to limit construction-related air emissions.

9. NOISE AND VIBRATION

- VM 47. Applicants shall work with affected communities that have sensitive receptors that would experience an increase of at least 5 dBA and reach 70 dBA to mitigate train noise to levels as low as 70 dBA by such means as are agreed to by an affected community and Applicants. In the absence of such an agreement, Applicants shall implement effective mitigation that could include such measures as (1) constructing noise control devices such as noise barriers, (2) installing vegetation or berming, or (3) installing, or providing funding for installation of, enhanced warning devices in order to provide the level of warning necessary to allow the community to request a waiver from Federal Railroad Administration (FRA) of the requirement to sound the horn and achieve quiet zone requirements.
- VM 48. Applicants shall consult with affected communities and work with their construction contractors to minimize, to the extent reasonably practicable, construction-related noise disturbances near any residential areas.
- VM 49. Applicants shall work with their construction contractors to maintain Transaction-related construction and maintenance vehicles in good working order with properly functioning mufflers to control noise.
- VM 50. In the Transaction-related construction of extended sidings, double-track, or new or upgraded connections, Applicants shall, where reasonably practicable, and consistent with safe and efficient operating practices, use continuously welded rail in order to reduce wheel/rail wayside noise.

- VM 51. In addition to the development of other noise mitigation measures, Applicants shall consider lubricating curves where doing so would both be consistent with safe and efficient operating practices and significantly reduce noise for residential or other noise sensitive receptors. Applicants shall also continue to employ safe and efficient operating procedures that, in lieu of, or as complement to, other noise mitigation measures can have the collateral benefit of effectively reducing noise from train operations. Such procedures include:
- inspecting rail car wheels to maintain wheels in good working order and minimize the development of wheel flats;
 - inspecting new and existing rail for rough surfaces and, where appropriate, grinding these surfaces to provide a smooth rail surface during operations;
 - regularly maintaining locomotives, and keeping mufflers in good working order; and
 - removing or consolidating switches determined by Applicants to no longer be needed.
- VM 52. To minimize noise and vibration, Applicants shall install and maintain rail and rail beds according to AREMA standards.
- VM 53. Applicants shall comply with FRA regulations establishing decibel limits for train operations.

11. WATER RESOURCES

- VM 54. In the case where there is a potential for a railroad drainage ditch to influence wetland hydrology, Applicants shall construct low permeability clay berms (wetland berms adjacent to the drainage channels that would be proximal to the isolated wetlands). These berms would minimize the impact to surface water drainage from the proposed drainage ditch.
- VM 55. Applicants shall maintain drainage ditches as permanent vegetated swales to provide storm water retention and treatment. Removal of accumulated sediments shall be conducted only as necessary to maintain storm water retention capacity and function.
- VM 56. To minimize sedimentation into streams and waterways during construction, Applicants shall use best management practices, such as silt fences and straw bale dikes, to minimize soil erosion, sedimentation, runoff, and surface instability during project-related construction activities. Applicants shall seek to disturb the smallest area possible around any streams and shall conduct reseeding efforts to ensure proper revegetation of disturbed areas as soon as reasonably practicable following Transaction-related construction activities.
- VM 57. In order to control erosion, Applicants shall establish staging and lay down areas for Transaction-related construction material and equipment at least 300 feet from

- jurisdictional waters of the United States and in areas that are not environmentally sensitive. Applicants shall not clear any vegetation between the staging area and the waterway or wetlands. To the extent reasonably practicable, areas with non-jurisdictional isolated waters will not be used for staging and lay down and will only be impacted when necessary for construction. When Transaction-related construction activities, such as culvert and bridgework, require work in streambeds, Applicants shall conduct these activities, to the extent reasonably practicable, during low-flow conditions.
- VM 58. During Transaction-related construction activities, Applicants shall require all contractors to conduct daily inspections of all equipment for any fuel, lube oil, hydraulic, or antifreeze leaks. If leaks are found, Applicants shall require the contractor to immediately remove the equipment from service and repair or replace it.
- VM 59. Applicants shall design all Transaction-related drainage crossing structures to pass a 100-year storm event. Applicants shall construct the new sidings, double-track, and connections in such a way as to maintain current drainage patterns to the extent reasonably practicable and not result in new drainage of wetlands.
- VM 60. Applicants shall employ best management practices to control turbidity and disturbance to bottom sediments of surface waters during Transaction-related construction.
- VM 61. Applicants shall implement their current noxious weed control program during construction and operation of Transaction-related sidings, double-track, and connections. All herbicides used by Applicants shall be approved by the U.S. EPA.
- VM 62. Applicants shall ensure that any herbicides used in ROW maintenance to control vegetation are approved by the U.S. EPA and are applied by licensed individuals who shall limit application to the extent necessary for rail operations. Herbicides shall be applied so as to prevent or minimize drift off of the ROW onto adjacent areas.
- VM 63. During construction, Applicants shall prohibit Transaction-related construction vehicles from driving in or crossing streams at other than established crossing points.
- VM 64. Applicants shall, to the extent reasonably practicable, ensure that any fill placed below the ordinary high water line of wetlands and streams is appropriate material selected to minimize impacts to the wetlands and streams. All stream crossing points shall be returned to their pre-construction contours to the extent reasonably practicable and the crossing banks will be reseeded or replanted with native species immediately following project-related construction.
- VM 65. Applicants shall obtain a National Pollutant Discharge Elimination System (“NPDES”) storm water discharge permit from U.S. EPA or appropriate State agencies for Transaction-related construction activities.

- VM 66. For impacts to non-jurisdictional isolated wetlands habitat along the new line, Applicants shall survey the route to determine if the Hines Emerald Dragonfly is present along the ROW.
- VM 67. Upon consultation with U.S. Fish and Wildlife Service, should the Hines Emerald Dragonfly be observed on the site of Transaction-related construction activities, Applicants shall implement appropriate measures prior to and during construction to reduce or eliminate impacts on the Hines Emerald Dragonfly.
- VM 68. Prior to initiating Transaction-related construction activities, Applicants shall consult with the local offices of the Natural Resource Conservation Service (“NRCS”) to develop an appropriate plan for restoration and re-vegetation of the disturbed areas (including appropriate seed mix specifications).
- VM 69. During construction activity, Applicants shall take reasonable steps to ensure contractors use fill material appropriate for the project area.
- VM 70. Applicants shall, to the extent reasonably practicable, revegetate the bottom and sides of the drainage ditches using natural recruitment from the native seed sources in the stockpiled topsoil.